

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

JANE DOE

PLAINTIFF

v.

CITY OF PFLUGERVILLE, TEXAS

ET AL.,

DEFENDANTS

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NO. 1:17-CV-00709-LY

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ATTORNEY SCOTT M. TSCHIRHART'S ADVISORY TO THE COURT REGARDING  
PLAINTIFF'S RESPONSE TO SHOW CAUSE ORDER (DKT. 6)

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TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, SCOTT M. TSCHIRHART (Tschirhart), an attorney licensed to practice before this Honorable Court and files this Advisory to correct the factual statements presented to this Court relating to Plaintiff's Response to Show Cause Order (Dkt. 6) and would respectfully show the Court as follows.

I.  
ADVISORY TO THE COURT

1. On November 30, 2017, Attorney Tschirhart became aware that Plaintiff's counsel, Lisa G. Hood (hereinafter "Hood"), presented to this Court *Plaintiff's Response to Show Cause Order* and attached the *Affidavit of Lisa G. Wood* as Exhibit "A" to that pleading.
2. The *Affidavit of Lisa G. Hood* contains material misrepresentations that were offered to this Court in order to persuade this Court not to dismiss this matter for want of prosecution.
3. Attorney Tschirhart finds that pursuant to his duties under Rule 3.3(d) of the ABA Model Rules of Professional Conduct and in pursuit of his general duty to be candid and truthful to the

Court, he must correct the record so that the Court is not misled by the material misrepresentations in the *Affidavit of Lisa G. Hood*.

## II. PROCEDURAL AND FACTUAL BACKGROUND

4. On July 26, 2017, Plaintiff Jane Doe (“Plaintiff”), filed *Plaintiff’s Original Complaint* (Dkt. 1) by and through her attorney of record, Lisa G. Hood (“Hood”), against multiple Defendants, including the City of Pflugerville, Texas. Plaintiff alleges that the lawsuit arises out of the unconstitutional search and seizure, deprivation of Plaintiff’s liberty interest, denial of counsel, denial of bail, false imprisonment, intentional infliction of emotional distress, assault, battery and rape of Plaintiff during the time frame of July 29, 2015 through August 5, 2015. Requests for Issuance of Summon were not made at the time of the filing of the *Complaint*.

5. On November 6, 2017, Hood filed an *Agreed Motion to Withdraw as Counsel* (Dkt. 2) in this matter. In the motion, its states, “Plaintiff desires to retain other counsel to represent her for the remainder of the litigation” and that Plaintiff “believes it is in her best interest to release Lisa G. Hood from representation”.

6. On November 9, 2017, the Hon. Judge Yeakel issued a *Show Cause Order* (Dkt. 3), indicating that the record showed “no summons has been requested and no answers have been filed in the case” nor had any proposed scheduling order been filed by the parties pursuant to Fed. R. Civ. P. 26. Thus, the Court ordered that Plaintiff “show cause **in writing** why this cause should not be dismissed for want of prosecution” and gave a deadline of November 20, 2017 to file same.

7. On November 16, 2017. Hood sent an email to City Attorney Charles Zech, requesting that he execute a Waiver of Service for the City of Pflugerville and its Police Officers. The matter was assigned to Attorney Tschirhart to investigate what manner of claim this might be. Attorney Tschirhart contacted Hood and asked for a copy of the Complaint, but made it clear that he had no

authority to accept service on behalf of the City of Pflugerville or any employee. Attached as Exhibit "A" is an email string on November 16, 2017, between Hood and Attorney Tschirhart:

From Tschirhart Nov. 16 at 12:25 PM:

Ms. Hood,  
Your email was directed to me. Can you send me what you want us to accept service on?  
Best regards,  
Scott M. Tschirhart

From Hood Nov. 16 at 1:16 PM:

Dear Mr. Tschirhart,  
I have attached one of the waiver forms and the Original Complaint. If you agree to sign the waivers, we will send the others for your signature as well.  
Thank you for the professional courtesy.  
Kind regards,  
Lisa Hood

From Tschirhart Nov. 16 at 2:25 PM:

Thank you Ms. Hood,  
Let me check with our client and get back with you.  
Best regards,  
Scott M. Tschirhart

Not only was there no oral agreement to accept waivers of service, Tschirhart clearly indicated that he would check with his client regarding acceptance.

8. On November 17, 2017, Plaintiff requested the issuance of summons for thirty-four (34) of the estimated one hundred plus (100+) named Defendants in this cause of action.

9. On November 20, 2017, Plaintiff filed her *Response to Show Cause Order* (Dkt. 6). In her response, Hood made material misrepresentations to the Court. Hood then presented to this Court pleadings containing representations that are in violation of Rule 11(b) of the *Federal Rules of Civil Procedure*. Specifically, the *Affidavit of Lisa G. Hood* contains the following material misrepresentation:



14. On November 16, 2017, I spoke with Scott Tschirhart of Denton Navarro Rocha Bernal & Zech who agreed to accept a Waiver of the Service of Summons for all Pflugerville defendants which include: City of Pflugerville, Texas; Kyle Dimmitt, Oscar Lopez; Crystal Cruz; Jermain Williams; R. Kauff; Kevin Rowley; Stewart Welch; Brandon Woodard; Lee Van Noy and Jim McLean.

This misrepresentation was false when made and was material because Hood was attempting to mislead this Court into refraining from dismissing this lawsuit. Hood also made the following misrepresentation:

16. On November 17, 2017, I spoke with Meghan Riley, Litigation Chief of the City of Austin Law Department . . .

This misrepresentation was false when made. Hood did not speak with Megan Riley.

10. On November 29, 2017, not knowing of the misrepresentation made by Hood to this Court, Attorney Tschirhart sent an email to Hood, a true and correct copy of which is attached as Exhibit “B.” In this email, Attorney Tschirhart clearly states “I am not authorized to accept service on behalf of the City or any of the other named Defendants.”

11. On November 30, 2017, Attorney Tschirhart learned that Hood had filed the *Affidavit of Lisa G. Hood*, and that the Affidavit contained material misrepresentations with regard to Attorneys Tschirhart and Riley. Attorney Tschirhart immediately sent an email to Hood requesting that she withdraw the Affidavit as it contained material misrepresentations. A true and correct copy of that email is attached as Exhibit “C.” Attorney Riley sent a similar email to Hood later in the day.

### **III. AFFIDAVIT AND REQUEST FOR NOTICE**

12. Attorney Tschirhart attaches the Affidavit of Scott M. Tschirhart to support the factual allegations herein and to support the emails between Attorneys Tschirhart and Hood.



13. Should the Court set this matter for hearing, Attorney Tschirhart respectfully requests that he be given notice and the opportunity to attend and proffer live testimony or respond to any questions from the Court.

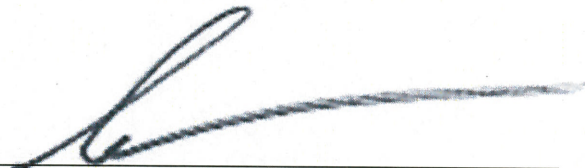
### CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Attorney Scott M. Tschirhart respectfully requests that this Court take notice of this Advisory and provide notice on any hearing that may be set on the Court's Order to Show Cause in this matter and further requests such other and further relief to which he may show himself to be justly entitled, at law and in equity.

Signed on this the 1<sup>st</sup> day of December, 2017.

**Denton Navarro Rocha Bernal & Zech, P.C.**  
attorneys & counselors at law • [rampagelaw.com](http://rampagelaw.com)  
A Professional Corporation  
2500 W. William Cannon Drive, Suite 609  
Austin, Texas 78745  
512/279-6431  
512/279-6438 (Facsimile)  
[scott.tschirhart@rampage-aus.com](mailto:scott.tschirhart@rampage-aus.com)

BY:



SCOTT M. TSCHIRHART  
State Bar No. 24013655

Attorney/Advisor

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served in accordance with the Federal Rules of Civil Procedure on this the 1<sup>st</sup> day of December, 2017, to the following:

Lisa G. Hood  
Attorney at Law  
P.O. Box 740936  
Dallas, Texas 75374

via Electronic Filing  
and/or Email: [lisaghood@gmail.com](mailto:lisaghood@gmail.com)

A handwritten signature in dark ink, appearing to read 'Scott M. Tschirhart', is written over a horizontal line.

SCOTT M. TSCHIRHART

**From:** [Scott Tschirhart](#)  
**To:** [Lisa Hood](#)  
**Cc:** [Hope Avila](#)  
**Subject:** RE: Pflugerville lawsuit.  
**Date:** Thursday, November 16, 2017 2:25:25 PM

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Thank you Ms. Hood,

Let me check in with our client and get back with you.

Best reagrds,

**Scott M. Tschirhart**



A Professional Corporation  
2500 W. William Cannon Drive, Suite 609  
Austin, Texas 78745  
Phone: (512) 279-6431  
Fax: (512) 279-6438  
Email: [Scott.Tschirhart@rampage-aus.com](mailto:Scott.Tschirhart@rampage-aus.com)  
[Rampagelaw.com](http://Rampagelaw.com)

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**From:** Lisa Hood [mailto:[lisaghood@gmail.com](mailto:lisaghood@gmail.com)]  
**Sent:** Thursday, November 16, 2017 1:16 PM  
**To:** Scott Tschirhart <[Scott.Tschirhart@rampage-aus.com](mailto:Scott.Tschirhart@rampage-aus.com)>  
**Subject:** Re: Pflugerville lawsuit.

Dear Mr. Tschirhart,

I have attached one of the waiver forms and the Original Complaint. If you agree to sign the waivers, we will send the others for your signature as well.

Thank you for the professional courtesy.

Kind regards,  
Lisa Hood

On Thu, Nov 16, 2017 at 12:25 PM, Scott Tschirhart <[Scott.Tschirhart@rampage-aus.com](mailto:Scott.Tschirhart@rampage-aus.com)> wrote:

**Exhibit "A"**



Ms. Hood,

Your email was directed to me. Can you send me what you want us to accept service on?

Best regards,

**Scott M. Tschirhart**



A Professional Corporation  
[2500 W. William Cannon Drive, Suite 609](#)  
[Austin, Texas 78745](#)  
Phone: [\(512\) 279-6431](#)  
Fax: [\(512\) 279-6438](#)  
Email: [Scott.Tschirhart@rampage-aus.com](mailto:Scott.Tschirhart@rampage-aus.com)  
[Rampagelaw.com](#)

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**From:** [Scott Tschirhart](#)  
**To:** [Lisa Hood](#)  
**Cc:** [Charlie Zech](#); [Hope Avila](#)  
**Subject:** Jane Doe v. City of Pflugerville et al; Case No. 1:17-cv-00709 LY  
**Date:** Wednesday, November 29, 2017 3:48:49 PM  
**Importance:** High

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Ms. Hood,

I am not authorized to accept service on behalf of the City or any of the other named Defendants.

Moreover, please be advised that this case was extensively investigated by the Texas Rangers and an Internal Affairs investigation was completed clearing the officers involved.

Ms. Kenyon obtained the videos from the scene of her arrest to the transport from the hospital to the Travis County Jail. She mentioned her attorney in communications with our department on July 7, 2016. I do not assume that her lawyer is you. However, you have a duty to investigate these matters before presenting such a pleading to the Court.

I have read the reports, examined the evidence and the emails to and from Ms. Kenyon. I would urge you to re-evaluate your position with regard to the allegations you have pled pursuant to Federal Rule of Civil Procedure 11(b).

*(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party **certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:***

*(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;*

*(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;*

***(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and***

*(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.*

If you reviewed your client's video, you simply cannot bring these allegations. If you have not reviewed the video, you are on notice that it would be unreasonable to fail to watch your client's video from both the scene of the arrest and the entire transport from the hospital to the Travis County Jail.

**Exhibit "B"**



If you still wish to move forward with these contentions, I will be compelled to advise our client to bring these matters to the attention of the Court and to seek sanctions pursuant to Federal Rule of Civil Procedure 11(c).

Please be advised that this communication is intended to be used as an exhibit.

Best regards,

**Scott M. Tschirhart**



A Professional Corporation  
2500 W. William Cannon Drive, Suite 609  
Austin, Texas 78745  
Phone: (512) 279-6431  
Fax: (512) 279-6438  
Email: [Scott.Tschirhart@rampage-aus.com](mailto:Scott.Tschirhart@rampage-aus.com)  
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**From:** Lisa Hood [mailto:[lisaghood@gmail.com](mailto:lisaghood@gmail.com)]  
**Sent:** Thursday, November 16, 2017 1:16 PM  
**To:** Scott Tschirhart <[Scott.Tschirhart@rampage-aus.com](mailto:Scott.Tschirhart@rampage-aus.com)>  
**Subject:** Re: Pflugerville lawsuit.

Dear Mr. Tschirhart,  
I have attached one of the waiver forms and the Original Complaint. If you agree to sign the waivers, we will send the others for your signature as well.

Thank you for the professional courtesy.

Kind regards,  
Lisa Hood

On Thu, Nov 16, 2017 at 12:25 PM, Scott Tschirhart <[Scott.Tschirhart@rampage-aus.com](mailto:Scott.Tschirhart@rampage-aus.com)> wrote:

Ms. Hood,

Your email was directed to me. Can you send me what you want us to accept service on?

**Exhibit "B"**



Best regards,

**Scott M. Tschirhart**



A Professional Corporation  
2500 W. William Cannon Drive, Suite 609  
Austin, Texas 78745  
Phone: (512) 279-6431  
Fax: (512) 279-6438  
Email: Scott.Tschirhart@rampage-aus.com  
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**From:** [Scott Tschirhart](#)  
**To:** [Lisa Hood](#)  
**Cc:** [Hope Avila](#)  
**Subject:** Jane Doe/Lisa Kenyon v. City of Pflugerville.  
**Date:** Thursday, November 30, 2017 10:48:52 AM  
**Importance:** High

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Ms. Hood,

It has come to my attention that on November 20, 2017, you filed a Plaintiff's Response to Show Cause Order to which you attached an affidavit.

In Paragraph 14 of that affidavit, you represented that I had agreed to accept service on behalf of all of the all Pflugerville defendants. I did not agree to accept service. Instead, I informed you that I had no such authority. Each and every one of my communications with you made it clear that I did not and do not have that authority.

I would urge you to withdraw this affidavit and correct your representations to the Court immediately. This is a serious violation of your duties to the Court pursuant to Rule 11 of the Federal Rules of Civil Procedure, moreover it is a clear violation of your ethical duties under the Texas Disciplinary Rules of Professional Conduct, specifically Rule 3.03:

Rule 3.03. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal;
- (2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;
- (3) in an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision;
- (4) fail to disclose to the tribunal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (5) offer or use evidence that the lawyer knows to be false.

(b) If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence.

If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts.

(c) The duties stated in paragraphs (a) and (b) continue until remedial legal measures are no longer reasonably possible.

**Scott M. Tschirhart**



A Professional Corporation  
2500 W. William Cannon Drive, Suite 609  
Austin, Texas 78745  
Phone: (512) 279-6431  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

JANE DOE

PLAINTIFF

v.

CITY OF PFLUGERVILLE, TEXAS  
ET AL.,

DEFENDANTS

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NO. 1:17-CV-00709-LY

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AFFIDAVIT OF ATTORNEY SCOTT M. TSCHIRHART

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STATE OF TEXAS

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COUNTY OF BEXAR

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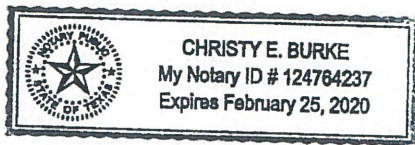
Before me, the undersigned notary, on this day personally appeared SCOTT M. TSCHIRHART, a person whose identity is known to me. After being by me duly cautioned to tell the truth, subject to the penalties for perjury, he did affirm and testify as follows:

1. "My name is Scott M. Tschirhart and I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I am an attorney licensed to practice in the State of Texas, the United States District Courts for the Eastern, Western, Northern and Southern Districts of Texas, and the Fifth Circuit Court of Appeals.
3. The factual statements contained in the attached *Advisory to the Court Regarding Plaintiff's Response to Show Cause Order (Dkt. 6)* are true and correct.
4. The email communications attached as Exhibits A, B, and C, and as referenced in my *Advisory to the Court Regarding Plaintiff's Response to Show Cause Order (Dkt. 6)* are true and correct copies of the originals.

Further Affiant sayeth not.

  
SCOTT M. TSCHIRHART

SUBSCRIBED AND SWORN TO BEFORE ME on this 1<sup>st</sup> day of December, 2017, to  
certify which witness my hand and official seal.



*Christy E. Burke*  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

(Affix Notary Seal Above)